

In Illinois, construction contractors are deemed to be the end users of tangible personal property they purchase for incorporation into real property. As such, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL).

January 22, 2002

Dear Xxxxx:

This letter is in response to your letter dated November 15, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Our client has asked us to contact you for the purposes of obtaining guidance on the proper use tax treatment of transactions resulting from a City Participation Program for Soil Stabilization and Soil Erosion.

The transactions will involve landscaping jobs to prevent soil erosion. Under the City Participation program, the city pays for 75% of the cost of the job within city approved limits. The property owner is responsible for the remaining 25% of the cost of the job. The entire job is billed to the property owner, and the property owner then receives reimbursement from the city.

Due to 75% of the job being paid by a tax-exempt organization, it is our position that our client's use tax liability under Reg. Sect. 130.2075 should be limited to tax on the 25% portion of the job that is to be paid by the property owner. The rationale for this position is similar to instances in which supplies and materials are incorporated into real estate of a tax-exempt organization with an active exemption number. We reference General Information Letter ST 01-0207-GIL for the treatment of materials and supplies incorporated into real estate of an exempt organization.

Although, the supplies and materials used in these jobs will be incorporated into the property of the property owner and not property of the governmental entity itself, the performance of the jobs benefits the city as a whole. Furthermore, if not for the existence of the subsidy program, it is unlikely that any of these jobs would be performed. In fact, it is the existence of the subsidy program that procures these jobs, much the same as if the job were being performed on the real property of the tax-exempt organization itself. The fact that the city is willing to participate in the program demonstrates that it has a vested interest in work performed.

We respectfully request the affirmation of our position on the use taxability of the materials and supplies incorporated into real estate as part of jobs funded through the city participation program, limiting the taxable portion to the 25% portion that is the responsibility of the property owner. We thank you for your time in considering our request.

Should you need any further information, please contact us.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. See the enclosed copies of 86 Ill. Adm. Code 130.101 and 130.201.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

In Illinois, organizations that are determined by the Department to be exclusively charitable, religious, educational, or a governmental body, are issued tax exemption identification numbers ("E" numbers). Organizations holding such numbers are exempted from paying sales tax on organizational purchases. The organization must obtain and present this number to a retailer, however, before it can make a tax-free purchase. Suppliers selling tangible personal property to such exempt organizations must retain the "E" number in order to document the exempt sale.

As stated above, contractors are generally considered to be the end users of tangible personal property they permanently incorporate into real estate and owe Use Tax upon their purchases. However, contractors who physically incorporate tangible personal property into real estate owned by holders of "E" numbers can purchase such property tax-free by providing their suppliers with the certification described in Section 130.2075(d), as well as the "E" number of the group into whose real estate that property will be incorporated. The suppliers should retain this information in order to document the tax-exempt sale. Sales of tangible personal property to a construction contractor who does not incorporate the items into real estate owned by an exempt organization are subject to tax.

In the situation you briefly describe, you state that the city does not own the property into which the materials are going to be incorporated; neither is the sale made to the city. The property owner enters into a contract for work to be done on his or her land, is the party billed by the contractor, and pays the contractor directly. The property owner is then reimbursed by the city. Under these circumstances, the materials incorporated would not be exempt.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.